IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 15419 of 2004

Between:

1 A. Laxman Rao S/o. Late Satyanarayana,
R/o.Chinnamandala Street, Srikakulam Town, & District.
2 Baratam Ramesh, S/o. Venkat Rao
R/o. Gorrelavari Street, Srikakulam Town & District.

...PETITIONERS

AND

1 Prohibition and Excise Superintendent, Srikakulam.
2 The Commissioner of Prohibition & Excise,Srikakulam.
3 Smt. R. Varalaxmi W/o. Reddy Suryanarayana,
R/o. S.S.Valasa Village, Srikakulam Mandal,
Srikakulam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue an appropriate writ, order or direction mostly one which is in the nature of a writ of Mandamus declaring the proceedings C.R.No.8255/2004/CPE/G2, Dt. 16.7.2004 of the 2nd respondent as illegal, irregular improper, arbitrary, unconstitutional, unjustified and unsustainable and set aside the same holding that the petitioners are entitled to continue as partners as per proceedings C.R.No.16028/03/CPE/G2, Dt. 04.09.2003 of M/s. S.S.Beers and Wines, S.S. Valasa Village, Srikakulam District along with the 3rd respondent.

Counsel for the Petitioner:MR.P.VEERA REDDY

Counsel for the Respondents 1&2: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.3 : Mr. A.Ravi Shankar.

The Court at the stage of admission made the following :

O R D E R:

The petitioners challenge the order dated 16.07.2004 passed by the second respondent, Commissioner of Prohibition & Excise, Government of Andhra Pradesh. Through the impugned order, the second respondent cancelled an order dated 4.09.2003 passed by him according permission for inclusion of the names of the petitioners in the IL-24 licence, which was originally granted in favour of the third respondent.

Learned counsel for the petitioners submits that the petitioners joined the third respondent as partners, and in accordance with the relevant provisions of the A.P.Excise Act and the Rules made there under, the names of the petitioners were included through proceedings dated 4.09.2003, after collecting the inclusion fee and verification of the record. He submits that the right that had accrued to the petitioners cannot be taken away through unilateral orders and proceedings passed or issued by the second respondent without hearing the petitioners. He has also made elaborate submissions on the merits of the matter.

In the counter affidavit filed on behalf of the respondents 1 and 2 it is stated that the impugned order was passed after due verification of the matter consequent on the report submitted by the third respondent. Learned Government Pleader, apart from making submissions in support of the impugned order, also produced the record.

Third respondent filed a counter affidavit stating, *inter alia,* that she never joined as partner with the petitioners and that the alleged inclusion of the names of the petitioners in the licence was managed without notice to her. Sri A.Ravi Shankar, learned counsel for the third respondent submits that when the inclusion itself was the result of fabrication of the record, there was no necessity to issue any notice to the petitioners.

The short question in this writ petition is as to the validity of the impugned order, particularly from the point of view of the procedure. There is a serious dispute between the petitioners on the one hand and the third respondent on the other, on

the question whether any partnership was constituted between them and whether an application was made by all of them seeking permission of the licensing authority, as well as the Commissioner, for inclusion of the names of he petitioners in the licence. So much so, a criminal case is also said to have been filed by the third respondent alleging forgery of her signature by the petitioners in the application etc. This Court does not touch those aspects.

Through the impugned order, the second respondent had cancelled the proceedings dated 4.09.2003, where under the names of the petitioners were included in the licence issued to the petitioners. If the names are included in a licence, the concerned persons acquire corresponding rights. If there are allegations of fraud, misrepresentation etc. by any affected party, the second respondent could certainly have verified the mater, duly putting the persons against whom allegations are made on notice. A perusal of the order under challenge discloses that the second respondent had acted totally upon the report said to have been submitted to him by the first respondent. Unless the petitioners are issued a notice directing them to show cause as to why the order dated 4.09.2003 shall not be cancelled, the second respondent could not to have cancelled the same.

On this short ground, the writ petition is allowed and the impugned order is set aside. It is, however, left open to the second respondent to initiate such action as he proposes against the petitioners by issuing an appropriate notice to them. Since the third respondent had initiated proceedings for cancellation of the inclusion of the names and because the duration of the licence is limited, the second respondent is directed to initiate necessary action and conclude the same within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

_____

6th December, 2004

Note: Issue copy in three days

(B/o)

pan

To

1 The Prohibition and Excise Superintendent, Srikakulam.
2 The Commissioner of Prohibitiion & Excise,Srikakulam.
3 Two C.Cs to the Government Pleader for Prohibition & Excise, High Court Buildings, Hyderabad (OUT)

4 Two C.D.copies.